IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Civil Application No.2055 of 2005
IN
First Appeal No.890 of 2005

Kallikal Parameshwaran Mohan. .. .. Applicant/ Appellant (Orig.Plff.)

v/s.

The Director, Director of Construction Service & Estate Management & ors. ..Respondents (Org.Defts.)

Mr.R.R.Jaiswal for Applicant/Appellant.

Mr.Ravi Shetty with Mr.N.R. Prajapati for Res.No.3.

CORAM : SMT.ROSHAN DALVI, J.

Dated : 29th June, 2007

P.C. :

1. This Appeal challenges the judgment and order in the suit filed by the Applicant/Appellant for a declaration that the Notice dated 8.10.2004 of Respondent No.2 is null and void. Under the notice, the Applicant was to hand over possession of the suit premises to the Respondents. He was

in occupation of the suit premises since 1972. The premises were given on license by way of an allotment letter to his father. His father was carrying on business of a saloon in the licensed premises. He expired on16.8.2004. The Applicant applied for allotment of the suit premises in his name being the eldest son. The allotment was refused on the ground that it stood cancelled with effect from the date of the death of the allottee since it was given to him for his life-time.

2. The Applicant claims that he continued to pay the licence fee for the suit premises as before. The Respondents contend that the transfer in favour of the third person is not contemplated under the allotment/licence dated 25.4.2003 granted to the Applicant and that the licence comes to an end ipso facto on the date of his death. The learned Judge, after considering the interpretation of the terms of the licence, dismissed the suit. The allotment/licence was personal to his father. Under its specific express terms, it was granted only for his life-time and until his death.

3. If there is a specific agreement between the parties to grant a licence, which is only in the nature of permission for the use and occupation of the premises only during his life time, the parties would be bound by such a condition. The licence is merely for permission to use the premises. It creates no interest in the premises and hence, none can be “transferred” to the licensee. Consequently, upon his death, no other party can be “transferred” the interest or benefits arising therefrom.

4. The Applicant has shown the documents relied upon by him in the Plaint, which have been considered by the learned trial Judge also. The Applicant's father was allotted

shop No.5 in Anushakti Nagar, which is the suit premises on 6.12.1972. The allotment was on certain terms and conditions mentioned in the letter of allotment itself. The allotee was given a licence to carry on business there on the terms and conditions stated in the allotment of shops in Anushakti Nagar, which are applicable to all such allottees. Condition No.16.3 was that the allotment will stand terminated without any right to compensation whatsoever, inter alia, upon the death of the allottee.

5. The Applicant's father continued to carry on business under the allotment made to him and subject to the conditions of the allotment.

6. After the death of the Applicant's father, the Applicant requested the Respondents by his letter dated 15.9.2004 to allow him to continue the business. That request has been rejected on 8.10.2004.

7. The Applicant has not shown any legal right to continue the allotment made to his father. The allotment was personal and specifically made for his life time. The learned Judge

has considered Clause 16(3) of the terms and conditions of the allotment, under which the licence terminated ipso facto upon the death of the Applicant's father. Consequently, the Applicant has not made out any case for continuation of the allotment or his possession in the allotted premises.

8. In the Writ Petition filed by the Applicant, the Applicant has shown discrimination. He has shown that in the similar circumstances the heirs and legal representatives of certain allottees, who expired, were allowed to continue in the allotted premises. He has given two illustrations of such discrimination. One was in the case of Paman Kutty Warrier and the other was in the case of Sreenath Gupta.

9. In the reply filed to that affidavit-in-rejoinder showing discrimination, the Respondents have shown that the financial condition of the said Warrier was too poor and for making livelihood, he was allowed to continue to carry on the business as he was unemployed and fully dependent upon the allottee and was also a co-worker in the business since the initial allotment and hence, a fresh licence was issued to

him.

10. In the case of Gupta, the heir was physically handicapped and hence, the licence was transferred to him. He was also working as a co-owner since the initial allotment of the shop. The Respondents have further stated that since the premises was in a restricted area, those heirs were issued the passes and hence, could have given access to the allotted premises. Since the Applicant never carried on business with his father, he was not issued the pass.

11. The Applicant has produced a pass being photo-pass No.533 of 1992, valid till 31.12.1992. From the pass it is seen that he is a co-worker. The Respondents contend that after the expiry of the pass, he could not have had entry to the suit premises. It is the contention of the Respondents that after 1992 the Applicant was not carrying on business with his father in the allotted premises. After the father's death, therefore, the Applicant cannot be allotted that premises and the allotment cannot be transferred to the name of the Applicant.

12. The Applicant has further relied upon a case in the case of Shri Abdul Wajid vs. The Director, Directorate of Construction, in which an order of Justice Chandrachud dated 13.2.2002 has been passed in respect of a shop being shop No.26 allotted in Anushakti Nagar, to the father of the said Abdul Wajid as and by way of rehabilitation in lieu of earlier premises acquired by him under the Land Acquisition Act, 1894. In that case, his father was carrying on business until his death and the Applicant had not paid the transfer charges, but was later prepared to pay those charges. Hence, the Respondents were directed to accept the transfer charges. That case was upon acquisition under the Land Acquisition Act.

13. The Respondents' Advocate states that in the case of the Applicant, residential accommodation was granted to the Applicant's father by way of rehabilitation when the premises of his father was taken over by the Respondents. That residential premises continues with the Applicant and an additional premises was allotted upon the request of the

Applicant's father. The Applicant has himself relied upon a letter dated 26.8.1972 of his father addressed to the Respondents in which he has mentioned that the Saloon was taken over by the Applicant and he had no source of income. That shop was sought to be licensed to another person who was in arrears of rent and the premises was kept vacant. Hence, he had prayed to the Respondents to allot him that shop on such conditions as the Respondents deem fit.

14. The Respondents have, accordingly, answered the case of discrimination.

15. After the impugned judgment dated 11.3.2005 was passed, the Respondents have taken possession of the suit shop. Consequently, the Applicant has applied for restoration of the possession and for appointment of Court Receiver, pending the Appeal. Since no legal right has been shown by the Applicant, possession cannot be restored and the Court Receiver cannot be appointed.

16. In view of all these aspects, it is impossible to grant an order to the Applicant to allot or transfer the premises to the

name of the Applicant in addition to the residential premises. Hence, the Civil Application is rejected.

(ROSHAN DALVI, J.)